

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-181

In the Matter of

Amendment of Section 73.202(b), RM-8727
Table of Allotments,
FM Broadcast Stations.
(Bagdad and Chino Valley, Arizona)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 11, 1995; Released: January 19, 1996

Comment Date: March 11, 1996
Reply Comment Date: March 26, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by 21st Century Radio Ventures, Inc. ("petitioner"), permittee of Station KAKP(FM), Channel 280A, Bagdad, Arizona, requesting the substitution of Channel 280C3 for Channel 280A at Bagdad, the reallocation of Channel 280C3 from Bagdad to Chino Valley, Arizona, and modification of its authorization (File No. BPH-930804MC) accordingly. Petitioner stated its intention to apply for Channel 280C3 if allotted to Chino Valley, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(g) and (i) of the Commission's Rules which permits the modification of a station authorization to specify a higher class channel and/or a new community of license without affording other interested parties to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License*, ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal petitioner states that the reallocation to the incorporated community of Chino Valley, which is not within an urbanized area, is mutually exclusive with its existing authorization at Bagdad. The distance between Bagdad and the petitioner's

specified site at Chino Valley is 64 kilometers (40 miles) whereas a distance of 142 kilometers (88 miles) is required in this instance.¹

3. In further support of its proposal petitioner states that the adoption of its proposal would result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992),² as the reallocation would provide Chino Valley (population 4,837)³ with its first local aural transmission service, whereas Bagdad (population 1,858)⁴ would retain potential local aural transmission service from vacant Channel 276C3.⁵ Additionally, petitioner advises that the substitution of channels and reallocation will enable Station KAKP(FM) to increase the degree of service within its 1 mV/m contour from its present theoretical level of 2,330 persons to 58,622 persons.

4. Petitioner states that the Commission has held that for the purposes of Section 1.420(i) proposals, unconstructed permits are not considered an "existing service", citing *Change of Community MO&O*, *supra* at 7097; *Sanibel and San Carlos, Florida*, 10 FCC Rcd 7215 (1995); *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (1993); and *Glencoe and Le Sueur, Minnesota*, 7 FCC Rcd 7651 (1992). Petitioner advises that as potential Station KAKP(FM) remains unbuilt, no loss of existing service to Bagdad will result from its proposal.⁶

5. We believe the public interest would be served by proposing to substitute Channel 280C3 for Channel 280A at Bagdad, reallocating Channel 280C3 to Chino Valley, and modifying the authorization for Station KAKP(FM) accordingly, since it would provide a first local aural transmission service to the latter community and would enable Station KAKP(FM) to increase its service area.

6. The petitioner's modification request at Chino Valley is consistent with the provisions of Section 1.420(g) and (i) of the Commission's Rules. Therefore, we shall propose to modify the construction permit for Station KAKP(FM) without entertaining competing expressions of interest in the use of Channel 280C3 at Chino Valley, Arizona, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

7. Channel 280C3 can be allotted to Chino Valley, Arizona, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's specified site located 4.6 kilometers (2.8 miles) southwest of the community, at coordinates 34-43-46 and 112-29-22. Additionally, as Chino Valley is located within 320 kilometers (199 miles) of the Mexican border, the Commission must obtain the concurrence of the Mexican government in the proposal.

¹ Coordinates specified by the petitioner for a transmitter site at Chino Valley are 34-43-46 and 112-29-22. Coordinates at the authorized site of Station KAKP(FM) at Bagdad are 34-34-46 and 113-09-38.

² The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

³ Population figures reported herein were taken from the 1990 U.S. Census.

⁴ Petitioner advises that during the last census period, Bagdad's population declined 25.4% while that of Chino Valley increased

69.2%.

⁵ We observe that an application for a construction permit to operate on Channel 276C3 at Bagdad has been filed with the Commission by Hualapai Broadcasters, Inc. (File No. 950824MI).

⁶ In this regard petitioner advises that its authorization for Station KAKP(FM) resulted from the grant of its "first come/first serve" application for vacant Channel 280A at Bagdad. Therefore, as the authorization was not obtained through a comparative hearing process, its proposal is not subject to the restrictions placed on the latter authorizations seeking to invoke the provisions of Section 1.420(i) of the Commission's Rules. See "*Commission MO&O*" *supra*.

8. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Present	Channel No.	Proposed
Bagdad, Arizona	280A	276C3	276C3
Chino Valley, Arizona	--		280C3

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **March 11, 1996**, and reply comments on or before **March 26, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

21st Century Radio Ventures, Inc.
Attn: James L. Primm, President
530 Wilshire Blvd., Suite 301
Santa Monica, CA 90401

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.